Supreme Court, U.S.
FILED

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No. ____ OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1995

MILFORD C. HORTON,

Petitioner,

v.

MONROE SYSTEMS FOR BUSINESS, INC., GERALD NEUMANN, MARVIN PASTOR, GERALD TULLY, MICHAEL GARDNER, HAROLD SHORT, and JOHN MISKEW,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does time to file appeal run from denial of a timely post-judgment motion, even where the post-judgment motion is partially repetitive of an earlier pre-judgment motion?

PARTIES

All parties to the proceeding in the court whose judgment is sought to be reviewed are contained in the caption of the case before this Honorable Court.

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OPINIONS BELOW

The Court of Appeals' decision sought to be reviewed appears in the Appendix. The Court of Appeals' Order Denying Petitioner's Petition for Rehearing also appears in the Appendix, along with those Orders of the District Court which are relevant to this Petition.

JURISDICTIONAL STATEMENT

The Judgment of the Court of Appeals for the Fifth Circuit was entered September 13, 1995. The Court of Appeals denied Petitioner's timely Petition for Panel Rehearing on October 25, 1995. This Court's jurisdiction is invoked under 28 U.S.C. § 1254.

FEDERAL RULES INVOLVED

Rule (4)(a) of the Federal Rules of Appellate Procedure ("Rule 4(a)"):

> *"Appeal in a Civil Case"*
>
> (1) Except as provided in paragraph (a)(4) of this Rule, in a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 must be filed with the clerk of the district court within 30 days after the date of entry of the judgment. . . .

* * *

(4) If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion under the Federal Rules of Civil Procedure:

* * *

(C) to alter or amend the judgment under Rule 59;

Rule 59(e) of the Federal Rules of Civil Procedure ("Rule 59"):

* * *

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

STATEMENT OF THE CASE

This case arises out of an employment discrimination lawsuit. Petitioner and several other over-forty-year-old employees of Respondent were "laid off" and were replaced with much younger workers, despite the claim of Respondents that the Company had reduced its work-force due to financial pressure.

This Petition seeks review of the Court of Appeals' dismissal of Petitioner's Appeal. The pertinent dates (all 1995) are:

January 4	Order Granting Summary Judgment
January 13	Motion to Reconsider (the **"Pre-Judgment Motion"**)
February 21	Entry of Denial of the Pre-Judgment Motion
February 21	Judgment entered
February 24	Petitioner's Rule 59 Motion (the **"Post-Judgment Motion"**)
February 28	Entry of Denial of Post-Judgment Motion
March 28	Notice of Appeal filed in District Court

Respondent Monroe moved to dismiss the appeal, believing that the Post-Judgment Motion somehow lost its force because a Pre-Judgment Motion had once been filed. The Court of Appeals dismissed the appeal.

EXISTENCE OF JURISDICTION BELOW

The District Court had federal jurisdiction pursuant to 28 U.S.C. § 1331 as a result of the questions of federal law presented by Petitioner's claims under 29 U.S.C. § 621, *et seq.*, 42 U.S.C. § 12101 *et seq.*, and pendant jurisdiction over state law claims.

REASONS FOR GRANTING THE WRIT

The Supreme Court should grant certiorari in this case because the decision of the Court of Appeals conflicts with the decisions of this Court and another Court

of Appeals by holding that Petitioner's Post-Judgment Motion did not toll the time for appeal. The Court of Appeals' decision in this case, which holds that a post-judgment motion to alter or amend the judgment filed within ten (10) days after entry of judgment **will not** toll the time for appeal where a similar pre-judgment motion had been filed and ruled upon prior to judgment, is in tension with this Court's decision in ***United States v. Ibarra***, ___ U.S. ___, 112 S.Ct. 4, 6-7 (1991), and with the holding in ***United States v. Indrelunas***, 411 U.S. 216, 217 (1973).

The Court of Appeals' decision also directly conflicts with ***Zazu Designs v. L'Oreal, S.A.***, 979 F.2d 499, 502 (7th Cir. 1992).

A proper determination of whether a post-judgment motion is a Rule 59(e) motion and, therefore, tolls the time for appeal is imperative to the preservation of rights in the District Courts and Courts of Appeals. A conflict on an issue such as this is of importance and concern to every litigant in a federal court, since, as this case makes clear, the timeliness of appeals may turn on whether the Court of Appeals considers a motion filed within ten (10) days of the judgment to be one which tolls the time for appeal under Rule 4(a)(4). Appellate deadlines should be "bright lines," and should turn on the literal application of the rules to avoid injustice.

1. The Appellate Deadlines Never Run Until After a Rule 58 Judgment is Entered

In ***Indrelunas***, this Court, in a per curiam opinion, held that the time to appeal does not begin to run until a separate document, a Rule 58 judgment, is entered.

United States v. Indrelunas, 411 U.S. 216, 217 (1973). By dismissing Petitioner's appeal, the Court of Appeals has mandated that the denial of a **pre-judgment** motion triggered the time for appeal. The denial of the Pre-Judgment Motion took place prior to the entry of judgment, albeit on the same day. This is inconsistent with this Court's rule that no appellate deadline will begin to run until **entry of a Rule 58 judgment**. *See* ***Indrelunas***, 411 U.S. at 217. Petitioner's appellate deadline could not have begun to run until entry of the judgment, and the filing of a post-judgment motion tolled the time for appeal under Rule 4(a).

2. A Pre-Judgment Motion Cannot "Use Up" the Right to File a Rule 59 Motion

By dismissing Petitioner's appeal, the Court of Appeals has mandated that the Pre-Judgment Motion somehow "used up" Petitioner's ability to file a Rule 59 motion following the entry of judgment. In addition to this "rule" being absent from the Federal Rules of Appellate Procedure, this new rule is inconsistent with this Court's holding in ***United States v. Ibarra***, ___ U.S. ___, ___, 112 S. Ct. 4, 6-7 (1991). In ***Ibarra***, this Court held that it is irrelevant that the post-judgment motion revisits issues previously ruled upon by the court. So long as it is filed within ten (10) days of the entry of judgment, it still qualifies as one of those motions which "tolls" the time for appeal under Rule 4(a). *Id.* **"Without a clear general rule litigants would be required to guess at their peril the date on which the time to appeal commences to**

run." *United States v. Ibarra*, ___ U.S. ___, ___, 112 S. Ct. 4, 6 (1991).

Under these Supreme Court cases, Petitioner's Post-Judgment Motion, which was the only motion filed and ruled-upon post-judgment, tolled the time for appeal. (It should be noted that Petitioner's Post-Judgment Motion was **not** identical to his Pre-Judgment Motion.) This Post-Judgment Motion was denied and the denial was entered on the docket February 28, 1995. Therefore, Petitioner's Notice of Appeal, filed on March 28, 1995, only twenty-nine (29) days after the denial of the Post-Judgment Motion, was timely.

3. The Seventh Circuit Has Found Jurisdiction For an Appeal On These Facts

The Fifth Circuit's decision in this case also squarely conflicts with the factually identical decision of the Seventh Circuit in ***Zazu Designs v. L'Oreal, S.A.***, 979 F.2d 499, 502 (7th Cir. 1992) (Easterbrook, J.). In ***Zazu***, L'Oreal made a motion under Rule 52(b) (Federal Rules of Civil Procedure) for an additional hearing following the filing of the opinion of the court, *but before the entry of judgment.* ***Zazu***, 979 F.2d at 502. This motion was denied by the court, and judgment was entered. Within ten (10) days, L'Oreal filed an "all-but-identical" motion. *Id.* Two years later, the court agreed to hear additional evidence, and modified its findings, but *did not modify its judgment. Id.* L'Oreal appealed. On the issue of appellate jurisdiction, Judge Easterbrook, joined by Judges Posner and Cudahy on this issue, noted:

> **[T]he parties have ignored a potential problem: a second post-trial motion does not extend the time for appeal. [citation omitted] But because**

> **only one of these motions was filed after the judgment, it suspended the judgment's finality and makes the appeal timely, even though the denial of the first motion shows that the duplicate was unlikely to succeed.** ***United States v. Ibarra***, ___ U.S. ___, ___, 112 S. Ct. 4, 6-7 (1991).

Zazu, 979 F.2d at 502 (underlining added).

Like the Seventh Circuit, but unlike the Fifth Circuit in this case, Moore's Federal Practice recognizes the difference between

Judgment Entered/POST-Judgment Motion/
POST-Judgment Motion

and

PRE-Judgment Motion/Judgment Entered/
POST-Judgment Motion

Specifically, the treatise uses a "*But cf.*" signal to separate the ***Zazu*** fact pattern of one pre- and one post-judgment motion from the more common scenario in which there are two post-judgment motions. *See* MOORE'S FEDERAL PRACTICE ¶ 204.12[1], at 4-95-96 n.63 (1994); *see id.* at ¶ 204.12[1] (1994-95 Supp. at p. 245) (again separating the two fact patterns with "*But cf.*"). As the Supplement puts it, "[s]ince the defendant's second motion was the only one filed after entry of judgment, it suspended the time to appeal even though the denial of the first motion showed that the duplicate was unlikely to succeed." *Id.*

Therefore, Petitioner's Post-Judgment Motion, being the only motion filed after judgment, tolled the time for appeal.

4. Any Rule 59 Motion Filed Within 10 Days of the Entry of Judgment Tolls the Time for Appeal

In its Motion to Dismiss, Respondent cited case law holding that if a *post-judgment motion* is filed and denied, a *subsequent post-judgment motion* urging reconsideration of that denial will not further toll the time for appeal. *See, e.g.*, ***Brown v. United Ins. Co. of America***, 807 F.2d 1239, 1242 (5th Cir. 1987) (per curiam). This Court has never endorsed the view that successive post-judgment motions ought to be ignored. In a footnote in ***Ibarra***, the Court expressly left that question open:

> **[O]nly a single motion for reconsideration was filed. We thus also have no occasion to consider whether it is appropriate to refuse to extend the time to appeal in cases in which successive motions for reconsideration are submitted. *See United States v. Marsh*, 700 F.2d 1322 (CA10 1983).**

United States v. Ibarra, ___ U.S. ___, ___, 112 S. Ct. 4, 7 n.3 (1991). In any event, this line of authority is inapplicable to, and does not address the issue in, this case for two reasons.

a. Petitioner's Rule 59 Motion Was Not the Type of Post-Judgment Motion Ignored By the Courts in the Case Law

The reasoning behind the general rule of ***Brown*** and its progeny is that a motion *seeking reconsideration of the order denying the Rule 59(e) motion* will not further toll the time for appeal:

> **A motion to alter or amend a judgment under Rule 59(e) that is served not later than 10 days after entry of judgment destroys the finality of the judgment for purposes of appeal. *If the motion is denied the finality of judgment is reestablished;* and the policy underlying finality precludes the court from entertaining a motion to reconsider that denial, where the reconsideration motion is served later than 10 days after entry of the [original] judgment.**

Brown v. United Ins. Co. of America, 807 F.2d 1239, 1242 (5th Cir. 1987), *citing* 6A MOORE'S FEDERAL PRACTICE ¶ 59.13[4] (underlining added; italics in original).

Petitioner's Post-Judgment Motion *did not* merely seek reconsideration of the denial of his Pre-Judgment Motion; it sought reconsideration of the entry of judgment. Therefore, his Post-Judgment Motion, having been filed within ten (10) days of the entry of judgment, **was** a Rule 59 motion, and it tolled the time for appeal under Rule 4(a)(4).

This crucial difference between the operative effect of a mere motion to reconsider a denial of a Rule 59 motion and a Rule 59 motion attacking the judgment was expressly recognized by the Court of Appeals in ***Wansor v. George Hantscho Co., Inc.***, 570 F.2d 1202 (5th Cir. 1978), *cert. denied*, 439 U.S. 953 (1978). In ***Wansor***, judgment was entered March 20, 1975, and Wansor filed several Rule 59 motions on March 28, 1975. These motions were denied on June 4, 1975, and Wansor filed a motion to reconsider *the denial of the March 28, 1975 motions.* While this second post-judgment motion directed only to the denial of the initial motions would not ordinarily toll the time for

appeal, the Court of Appeals in this case affirmed the panel decision to allow an exception. Pertinent to our question, however, the Court noted:

> **A motion to reconsider an order disposing of a motion of the kind enumerated in Rule 4(a) does not again terminate the running of the time for appeal. [FN5] If this were a motion to reconsider the original judgment, it would function as a motion for new trial or judgment notwithstanding the verdict, and would toll the running of the period for appeal if timely filed – within 10 days after the judgment.**

Wansor, 570 F.2d at 1206, and n.5 (underlining added).

Petitioner's Rule 59(e) motion was **not**, therefore, the type of motion attacked by the courts in these cases, and **did** operate to toll the time for appeal under Rule 4(a)(4).

b. Petitioner's Timely Post-Judgment Motion Tolled the Time for Appeal

Second, Moore's Federal Practice, *Brown, Wansor,* and *Durango Assocs. v. Reflange, Inc.*, 912 F.2d 1423 (Fed. Cir. 1990), each impliedly holds that if a second post-judgment motion is filed and served within ten (10) days of the entry of judgment, it tolls the time for appeal.

See Brown:

> **A motion to alter or amend a judgment under Rule 59(e) that is served not later than 10 days after entry of judgment destroys the finality of the judgment for purposes of appeal. *If the motion is denied the finality of judgment is reestablished;* and the policy underlying finality precludes the court from entertaining a**

> **motion to reconsider that denial, where the reconsideration motion is served later than 10 days after entry of the [original] judgment.**

Brown v. United Ins. Co. of America, 807 F.2d 1239, 1242 (5th Cir. 1987), *citing* 6A MOORE'S FEDERAL PRACTICE ¶ 59.13[4] (underlining added; italics in original).

See also ***Wansor***:

> **A motion to reconsider an order disposing of a motion of the kind enumerated in Rule 4(a) does not again terminate the running of the time for appeal. [FN5] If this were a motion to reconsider the original judgment, it would function as a motion for new trial or judgment notwithstanding the verdict, and would toll the running of the period for appeal if timely filed – within 10 days after the judgment.**

Wansor v. George Hantscho Co., Inc., 570 F.2d 1202, 1206 n.5 (5th Cir. 1978), *cert. denied*, 439 U.S. 953 (1978) (underlining added).

And *see* Moore's Federal Practice discussing *Durango*:

> **It has uniformly been held that a second post-judgment motion of the type which would toll the appeal period under Fed. R. App. P. 4(a)(4), not filed within 10 days after entry of a judgment, does not toll the appeal period a second time. Since plaintiff's second Rule 59(e) motion was not filed within 10 days after entry of judgment for the defendants, it did not toll the appeal period.**

MOORE'S FEDERAL PRACTICE, ¶ 204.12[1] (1994-95 Supp. at p. 245) (discussing ***Durango Assocs. v. Reflange, Inc.***, 912 F.2d 1423 (Fed. Cir. 1990)).

Again, this case law expressly holds that a motion attacking the judgment ("post-judgment motion of the type which would toll the appeal period") which is filed within ten (10) days of the entry of judgment, as Petitioner's was, **tolls the time for appeal**. In other words, because Petitioner's Post-Judgment Motion 1) attacked the entry of judgment, and 2) was filed within ten (10) days of the entry of judgment, it was a Rule 59(e) motion, and, under Rule 4(a), tolled the time for appeal.

As shown by the Court of Appeals' result in this case, and the Seventh Circuit opinion in ***Zazu***, there is a growing division among the Courts of Appeals regarding the proper application of Rule 4(a)(4) to post-judgment motions.

CONCLUSION

The Petition should be granted. The Court may wish to consider summary disposition because this result conflicts with ***United States v. Ibarra***.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-10287

MILFORD C. HORTON,

Plaintiff-Appellant,

versus

MONROE SYSTEMS FOR
BUSINESS, INC., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas

(Filed Sept. 13, 1995)

Before GARWOOD, STEWART and PARKER, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the motion of appellee, Monroe Systems for Business, Inc., to dismiss the appeal is GRANTED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-10287

MILFORD C. HORTON

Plaintiff - Appellant

v.

MONROE SYSTEMS FOR BUSINESS, INC;
GERALD NEUMANN; MARVIN PASTOR;
GERALD TULLY; MICHAEL GARDNER;
HAROLD SHORT; JOHN MISKEW

Defendants - Appellees

MILFORD C. HORTON

Plaintiff - Appellant

v.

MONROE SYSTEMS FOR BUSINESS, INC;
GERALD NEUMANN; MARVIN PASTOR;
GERALD TULLY; MICHAEL GARDNER;
HAROLD SHORT; JOHN MISKEW

Defendants - Appellees

Appeal from the United States District Court
for the Northern District of Texas, Dallas

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Filed October 25, 1995)

Before GARWOOD, STEWART and PARKER, Circuit Judges.

PER CURIAM:

(✓) The Petition for Rehearing is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FRAP and Local Rule 35) the Suggestion for Rehearing En Banc is also DENIED.

( ) The Petition for Rehearing is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor, (FRAP and Local Rule 35) the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ W. Garwood
United States Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MILFORD C. HORTON	)	
VS.	)	3-93-CV-1900-AH
MONROE SYSTEMS FOR BUSINESS, INC.	)	(Filed Febr. 15, 1995)

ORDER

On this date came on to be considered Plaintiff's Motion to Reconsider Order of Summary Judgment filed on January 13, 1995, and having reviewed the same, the court finds and orders as follows:

In his motion for reconsideration Plaintiff suggests that the court erred in describing the burden he had as the opponent to the motion for summary judgment (See Plaintiff's motion for reconsideration at page 2). The statement quoted from the court's order is lifted out of context. The quoted statement comes from a paragraph which describes the burden of proof which a plaintiff must discharge in a discrimination suit in which non-discriminatory reasons are articulated by a defendant employer (See Memorandum Opinion and Order, filed January 4, 1995 at page 3). However, in describing Horton's burden to defeat the motion, the opinion clearly notes that he submitted deposition excerpts and affidavits to "demonstrate the existence of an issue of fact on the presence of age animus" (Id. pages 4-5) and concluded that "Plaintiff has failed to show that a genuine issue of fact exists as to whether he was terminated on the basis of his age" (Id. page 6).

Plaintiff's claim that Bud Ward's deposition provides evidence of direct age animus against him (Plaintiff's motion for reconsideration at pages 3-4) relies on a gross distortion of the contents of Ward's deposition excerpts (See Exhibit G to Plaintiff's response filed on December 13, 1994). The partial quotation cited in his motion for reconsideration conveys the clear impression that remarks of Mr. Paster were directed toward Plaintiff. To the contrary, the excerpt reflects that the only person to whom Paster referred was Virgil Jones (Exhibit G, supra, at pages 58-59). Plaintiff's reliance on *E.E.O.C. v. Mansville Sales Corp.*, 27 F.3rd 1089-1094 (5th Cir. 1994) – cited for the first time in his motion for reconsideration – to show that Virgil Jones's testimony is evidence sufficient to create a genuine issue of fact is misplaced. In *Mansville* the district court excluded all age-related statements made by the plaintiff's supervisor over a four year period, while Mr. Jones' proffered testimony relates to a single statement made by a Mr. Short at least four years prior to Plaintiff's termination (See Exhibit I to Plaintiff's response filed on December 13, 1994, at ¶10; Memorandum Opinion and Order at page 5).

Horton also claims that the court erred in failing to consider his statistical data (See motion for reconsideration at pages 5-6; see also Plaintiff's response filed on December 13, 1994, Exhibits D and F).[1] This statistical

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[1] In his motion for reconsideration Plaintiff seeks to present additional evidence (See motion at page 6, Exhibits 3, 4 and 5). Plaintiff did not seek an extension of time to respond to Defendant's motion and has submitted these data only after the court entered its order in Defendant's favor. Accordingly, these additional materials were not timely filed and need not be considered for the first time in ruling on Plaintiff's motion of reconsideration.

information is not relevant to the issues in Plaintiff's case. Specifically, although the subsequent hirees were under the age of 40 at the time of employment, Plaintiff has failed to present evidence either that applications of persons over 40 were rejected or that persons over the age of 40 who did apply were equally qualified with those who were selected for employment.

Plaintiff's argument in support of his ADA claim merely reiterates his previously rejected argument. As with his "edited" version of Mr. Ward's deposition testimony, supra, he also misstates the testimony of Mr. Neumann (See Plaintiff's response filed December 13, 1994, Exhibit A at page 45). Likewise, Plaintiff's motion for reconsideration adds nothing to his worker's compensation retaliation claim argument which was previously rejected.

The final part of Plaintiff's motion seeks to present additional evidence of pretext. A review of Plaintiff's response filed on December 13, 1994, reflects that none of the factual contentions raised in Horton's motion for reconsideration was presented in his response. Moreover, the vast majority of the supporting exhibits are presented for the first time in his motion for reconsideration, e.g., Exhibit 10 – excerpts from deposition of Robert A. Wilkins taken on December 13, 1994; Exhibit 1 – excerpts from deposition of Gerald Neumann;[2] Exhibit 6 – Plaintiff's affidavit executed on January 9, 1995; and Exhibit 7).

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[2] Excerpts from Neumann's deposition were included with Plaintiff's response filed on December 13, 1994 (See Exhibit A). However, none of the excerpts cited in Horton's motion for reconsideration was included in Exhibit A.

Prior to filing his response on December 13, 1994, Plaintiff did not file a motion under Rule 56(f) or seek an extension of time within which to respond.[3] Plaintiff's additional arguments and additional exhibits have not been timely presented. To permit a party to await a court order on a case dispositive motion and thereafter assert new grounds following an unfavorable ruling would not only abuse scarce judicial resources and prejudice the interests of the party opponent, but also would undermine the efficacy of Rule 56. Accordingly, finding that Plaintiff's additional argument and evidence have not been timely presented, Horton's motion for reconsideration on these grounds will be denied.

IT IS, THEREFORE, ORDERED that Plaintiff's Motion to Reconsider filed on January 13, 1995, is denied.

A copy of this order shall be transmitted to counsel for the parties.

ENTERED this 15th day of February, 1995.

/s/ William F. Sanderson, Jr.
UNITED STATES
MAGISTRATE JUDGE

---

[3] Plaintiff did suggest that policy manuals, not previously produced, might be relevant to his state law breach of contract claim (See Plaintiff's response at pages 22-23). For the reasons noted in the court's memorandum opinion filed on January 4, 1995, such manuals were irrelevant as a matter of law (Opinion at page 9). Plaintiff has not sought reconsideration on this aspect of the court's order.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MILFORD C. HORTON	)	
VS.	)	3-93-CV-1900-AH
MONROE SYSTEMS FOR BUSINESS, INC.	)	(Filed Febr. 15, 1995)

JUDGMENT

The court having considered Defendants' Motion for Summary Judgment, Defendants' Memorandum of Authorities in Support of Its Motion for Summary Judgment and Plaintiff's Response thereto finds that Defendants' motion is well taken and pursuant to the court's memorandum opinion and order filed on January 4, 1995,

It is ORDERED, ADJUDGED AND DECREED that Defendants' Motion for Summary Judgment is granted in its entirety and Plaintiff's claims in this suit are dismissed in their entirety with prejudice.

IT IS FURTHER ORDERED that Defendants shall recover their costs of court and Defendants are directed to file a Bill of Costs within ten days of the date of this judgment.

A copy of this order shall be transmitted to counsel for the parties.

ENTERED this 15th day of February, 1995.

/s/ William F. Sanderson, Jr.
UNITED STATES
MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MILFORD C. HORTON	)	
	)	3-93-CV-1900-AH
VS.	)	
	)	(Filed
MONROE SYSTEMS FOR BUSINESS, INC. ET AL	)	Febr. 27, 1995)
	)	
	)	

ORDER

On this date came on for consideration Plaintiff's Renewal of His Motion to Reconsider Order of Summary Judgment, Plaintiff's Supplemental Motion to Reconsider Objection to Defendants' Untimely Response and Plaintiff's Correction of Record filed February 24, 1995, and

IT IS ORDERED that Plaintiff's motion is in all things denied.

A copy of this order shall be transmitted to counsel for the parties.

ENTERED this 27th day of February, 1995.

/s/ William F. Sanderson, Jr.
UNITED STATES
MAGISTRATE JUDGE